

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 06-546C

(Filed: January 16, 2007)

)
VIRGIL AVERY WITHERS, <i>pro se</i> ,)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant.)
)

ORDER

This action turns on events and circumstances arising in a prior action brought in this court by plaintiff, Virgil Avery Withers. In the prior action, *Withers v. United States*, No. 06-64C, Mr. Withers sought to overturn his conviction for two bank robberies committed in North Carolina. Among other things, he prayed for his release from prison and damages of at least \$10,283,477,661 for alleged wrongs relating to his prosecution, conviction, and subsequent incarceration for bank robbery. Compl. in No. 06-64C, at 1-5. That action was dismissed on June 14, 2006, and Mr. Withers endeavored to take an appeal, but the appeal was dismissed by the Federal Circuit on September 5, 2006. *Withers v. United States*, No. 06-5103 (Fed. Cir. Sept. 5, 2006) (dismissed for failure either to pay the appellate filing fee or to move for leave to proceed *in forma pauperis*). Now, in the instant action, Mr. Withers asserts that he attached a “bond” to his previously filed “compulsory counterclaim” in the prior case, in the amount of \$1 billion. Compl. in No. 06-546C, at 3-4. He cites various provisions that allow parties to deposit money with a federal court and later withdraw that money. Compl. in No. 06-546C, at 4-5 (citing 28 U.S.C. §§ 2041-42 and Fed. R. Civ. P. 67).¹ Mr. Withers claims that he is entitled to return of the alleged deposit. The government has moved to dismiss for lack of subject matter jurisdiction or for failure to state a claim upon which relief can be granted.

¹The Rules of the United States Court of Federal Claims (“RCFC”) do not contain a provision equivalent to Fed. R. Civ. P. 67.

Mr. Withers' claim is patently frivolous. Mr. Withers deposited no money with the court in the prior litigation. He thus has no foundation for his claims. His claim consequently is one which is "so insubstantial, implausible, foreclosed by prior decisions of th[e] [c]ourt [of appeals], or otherwise completely devoid of merit as not to involve a federal controversy." *Moden v. United States*, 404 F.3d 1335, 1341 (Fed. Cir. 2005).

Conclusion

The government's motion to dismiss under RCFC 12(b) is GRANTED, and this case shall be dismissed.² The Clerk shall enter judgment accordingly. No costs.

IT IS SO ORDERED.

Charles F. Lettow
Judge

²Mr. Withers filed a motion on October 18, 2006, to strike all documents filed and served by the government. That motion is DENIED.